IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.536 Of 2006.

Gopali & Another Vs. Smt. Ratni

Date Of Order ::: 13.12.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. Manoj Sharma, Counsel for defendant-appellants
Mr. Deepak Pareek, Counsel for plaintiff-respondent

By the Court :

Heard learned counsel for both the parties on the application under Section 5 of the Limitation Act as well as on the admission of the second appeal.

The plaintiff-respondent filed a suit for permanent injunction as well as dispossession from the disputed property, which was decreed by the Lower Court. The judgment and decree passed by the Lower Court has been affirmed by the First Appellate Court also.

I have heard the learned counsel for both the parties and after considering their submissions in the

light of the judgment and decree passed by the both the Courts below, I find that the controversial issues involved in the present case are relating to the question of facts and there is a concurrent finding of fact by both the Courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

I have also considered the grounds mentioned in the application for condonation of delay in filing the second appeal and I am not satisfied with the reasonings given by the learned counsel for the appellant for condonation of delay, therefore, the application under Section 5 of the Limitation Act is accordingly dismissed.

Learned counsel for the plaintiff-respondent has produced certified copy of the proceedings dated 02.11.2006 of the Executing Court, wherein it is mentioned that in execution of the decree, the appellants have already been dispossessed from the property, in dispute with the help of Police on 02.11.2006.

No substantial question of law is involved in this second appeal.

Consequently, the second appeal is accordingly dismissed being barred by limitation as well as on merits also with no order as to costs.

(Narendra Kumar Jain) J.